

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

CARLOS PAILMA,
Debtor.

Case No. 96-55891-JRG
Chapter 7

JOYCE PAILMA,
Plaintiff,
vs.

Adversary No. 96-5650

MEMORANDUM DECISION

CARLOS PAILMA,
Defendant.

I. INTRODUCTION

Plaintiff, Joyce Pailma, who is the former wife of Chapter 7 debtor Carlos Pailma, brought this adversary proceeding against the debtor under 11 U.S.C. § 727(a)(4)(A). She seeks denial of the debtor's discharge on the basis that he knowingly and fraudulently made false oaths in connection with his bankruptcy case. In the alternative, plaintiff seeks the denial of the discharge of certain debts owed to her under 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(5).

1 For the reasons set forth below, the court concludes that
2 the cumulative effect of the debtor's failure to adequately
3 disclose (1) the true value of his interest in the Baja,
4 Mexico, property; (2) his ownership interest in certain real
5 properties in Watsonville, California; and (3) his ownership
6 interest in a deed of trust recorded against one of debtor's
7 real estate partnerships, as well as his general lack of
8 credibility, requires the court to deny the debtor's discharge.
9 Accordingly, the debtor's discharge will be denied.

10
11 **II. FACTUAL BACKGROUND**

12 On August 7, 1996, Pailma, an experience real estate
13 broker, filed his Chapter 7 Petition and Schedules. In his
14 Schedules, he listed total assets of \$13,500. In contrast,
15 debtor's total liabilities were listed at \$3,123,410.40. The
16 debtor's most significant asset listed on Schedule "B" was a
17 leasehold home in Mexico (the "Baja property"). He listed the
18 value of this Baja property at \$12,000. He described the Baja
19 property as a "[l]easehold Home in [Tijuana] Baja Calif. Mexico
20 net of the arrearages of \$5,000 back taxes, Legal & Trustee
21 Fees; \$3,000 owed on lease."

22 The debtor also listed six limited partnership interests on
23 his Schedules which he indicated had zero value. On September
24 25, 1996, the debtor amended his Schedules to report an
25 additional "general partnership interest in SANCON." His
26 interest was described as "20% partnership interest with
27 siblings in parents' home, subject to advances of \$35,000 plus
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1 interest." The debtor valued this asset at zero.

2 On the same day as the debtor filed his amended Schedule,
3 the § 341 creditor's meeting was held. Only one week later, on
4 October 2, 1996, the Trustee filed his report of no assets
5 essentially indicating that he did not believe there were assets
6 which could be recovered for the benefit of creditors.
7 Thereafter, on November 11, 1996, plaintiff filed this adversary
8 proceeding seeking the denial of debtor's discharge.

9
10 **III. DISCUSSION**

11 **A. Plaintiff's Allegations.**

12 Plaintiff asserts that the debtor failed to list certain
13 assets in his schedules and undervalued the assets that were
14 listed, thereby concealing them from the trustee and creditors.
15 Specifically, plaintiff alleges that debtor:

16 1. Undervalued his ownership interest in the leasehold
17 estate located at Lot 9, Block "G," Section Playas, 9 Calle
Mayapan, Rosarito Mexico.¹

18 2. Concealed ownership of the real property located at 162
19 Elm Street, Watsonville, California in which he held title as a
joint tenant.

20 3. Undervalued his ownership interest in real property
21 located at 158 Elm Street, Watsonville, California.

22 4. Concealed his ownership interest in a deed of trust
23 recorded against Las Palomas, one of debtor's real estate
partnerships.

24 **B. The Legal Standard.**

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26 ¹ Plaintiff also alleges that debtor failed to list his ownership of a used 1980
27 Porsche 928 automobile. The court will not address the merits of this claim, as the
28 cumulative effect of the debtor's failure to adequately disclose his (1) interest in the
Elm Street Properties; (2) interest in a deed of trust; and (3) interest in the Baja
property, as well as his general lack of credibility, requires a denial of his discharge.

1 Plaintiff contends that the debtor's discharge should be
2 denied because debtor knowingly made false oaths in the
3 bankruptcy case. Section 727(a)(4)(A) provides that:

- 4 (a) The Court shall grant the debtor a discharge, unless
5 (4) the debtor knowingly and fraudulently, in or in
6 connection with the case.....
(A) made a false oath or account.....

7 The burden is on the plaintiff to prove the grounds for a
8 denial of discharge by a preponderance of the evidence. In re
9 Coombs, 193 B.R. at 560; See Also In re Cox, 41 F.3d 1294, 1297
10 (9th Cir. 1994); In re Lawler, 141 B.R. 425, 429 (9th Cir. BAP
11 1992). More specifically, a plaintiff in a § 727(a)(4)(A)
12 action must show that: (1)debtor made a statement under oath;
13 (2) the statement was false; (3) debtor made the statement with
14 fraudulent intent; and (5) the statement related materially to
15 the bankruptcy case. In re Coombs, 193 B.R. at 563; In re
16 Bailey, 147 B.R. 157, 162 (Bankr. N.D. Ill. 1992); In re Metz,
17 150 B.R. 821, 824 (Bankr. M.D. Fla. 1993).

18 As in any § 727(a) action, the court must construe the
19 section in favor of the debtor, in light of the fact that
20 Congress has described the § 727 discharge provision as the
21 "'heart of the fresh start provisions of the bankruptcy law,' as
22 well as consideration of the extreme nature of a discharge
23 denial." Casey v. Kasal (In re Kasal), 217 B.R. 727, 734
24 (Bankr. E.D. Penn. 1998) (quoting H.R.REP. No. 595, 95th Cong.,
25 1st Sess. 384 (1977), U.S. Code Cong. & Admin. News 1978, pp.
26 5787, 5963, 6340).

27 However, a false oath or account, for purposes of §
28 727(a)(4)(A), applies not only to false statements made under

1 sworn oath, but also is applicable to declarations under penalty
2 of perjury, such as those made by a debtor on Official
3 Bankruptcy Forms. In re Kasal, 217 B.R. at 734. Moreover, the
4 debtor is under a paramount duty to carefully consider all
5 questions included in the Schedules and Statement of Financial
6 Affairs and see that each is answered accurately and completely.
7 In re Woodson, 839 F.2d 610, 614-17 (9th Cir. 1988); Garcia v.
8 Coombs (In re Coombs), 193 B.R. 557, 563 (S.D. Cal. 1996); In re
9 Haverland, 150 B.R. 768, 770. Therefore, a false statement or
10 omission made by a debtor on his Schedules or Statement of
11 Financial Affairs constitutes a false oath or statement under §
12 727(a)(4)(A) which may give rise to denial of a debtor's
13 discharge. Accord, e.g., In re Chalik, 748 F.2d 616, 628 (11th
14 Cir. 1984); and Farmers Co-op Ass'n v. Strunk, 671 F.2d 391, 395
15 (10th Cir. 1982). A debtor's false oath is "material," for
16 denial of discharge purposes, if it concerns discovery of
17 assets, business transactions, and/or past business dealings of
18 the debtor or the existence or disposition of the debtor's
19 property.

20 Since the task of proving fraudulent intent through direct
21 evidence is often a near impossibility, many courts have ruled
22 that such intent can be deduced from all the facts and
23 circumstances of the case. Devers v. Bank of Sheridan (In re
24 Devers), 759 F.2d 751, 754 (9th Cir. 1985); Salomon v. Kaiser
25 (In re Kaiser), 722 F.2d 1574, 1582-83 (2d Cir. 1983).

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27 **C. The Baja Property.**
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1 On March 2, 1984, plaintiff and debtor purchased a thirty
2 year leasehold in a vacation home in Mexico.² The property at
3 Lot 9, Block "G," Section Playas, 9 Calle Mayapan, Rosarito
4 Mexico is a two bedroom and two bath home (the "Baja property").
5 The evidence indicates the property's purchase price was
6 somewhere between \$35,000-\$45,000. Defendant's Exhibit J(1) is
7 the purchase agreement for the Baja Property. Under the express
8 language of the agreement, the property was purchased for
9 \$35,000 in cash with no mortgage owing on the property.

10 However, the document appears to be false. Testimony indicates
11 that \$45,000 may have in fact been paid. The testimony also
12 indicates that money was still owed to the seller, Mrs. Mellon.

13 Twelve years later at the time of his bankruptcy, the
14 debtor valued his ownership interest in the property at only
15 \$12,000. Pailma set forth the total arrearages against the
16 property as being \$8,000 thereby suggesting to the Trustee that
17 there is no recoverable value in the property for creditors. As
18 previously noted, the Trustee filed a no asset report shortly
19 after the meeting of creditors.

20 The debtor presents several arguments in support of his
21 \$12,000 valuation, some of which are clearer than others.
22 First, the debtor argued that the Baja property is in the
23 process of falling into the sea. The evidence demonstrates this
24 argument to be fatally flawed. For example, despite the alleged
25 inevitable destruction of the debtor's Baja property, the home
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27 ² Debtor received all of plaintiff's interest in the leasehold under the parties
28 martial separation agreement.

1 remains furnished and inhabitable 14 years later. Moreover, the
2 debtor admits investing \$10,000 into the home for remodeling
3 four years after the home was purchased. Most importantly, the
4 evidence showed that the alleged erosion to the Baja property
5 began before the property was purchased and no significant
6 structural changes have occurred since the purchase date.

7 The debtor created a new defense under questioning by his
8 own attorney. He argued that his \$12,000 valuation was a
9 "process of evaluation." He explained that 10 years remained on
10 the lease and he valued each year at approximately \$1,600.00-
11 \$2,000.00. Thus, under his calculations, the property was worth
12 \$20,000, less the \$8,000 owed on the property. The court
13 recognizes the inherent weaknesses of the debtor's argument and
14 calculations.³

15 The debtor's purported calculation is flawed for several
16 reasons. First of all, the debtor's testimony was unclear as to
17 how or why he believed the property is only worth \$1,600 per
18 year. Secondly, this approach and valuation is in direct
19 conflict with other statements he has made. The plaintiff
20 testified that Pailma represented the fair market value of the
21 Baja property to be \$200,000 in 1994. Similarly, four years
22 prior to his bankruptcy filing, debtor executed a loan
23 application, "under penalty of perjury," in which he represented
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25 ³The debtor purchased a thirty year leasehold only ten years prior to his filing of
26 bankruptcy. However, under his "process of evaluation," the debtor calculated that only
27 ten years remained on his leasehold. The express language of the lease agreement appears
28 to record the commencement of the leasehold in 1975; ten years prior to the debtor's
purchase of the leasehold. The court has found many elements of the lease document to be
false. Therefore, the dates expressed in the document are unreliable. In conclusion, the
court finds the debtor's reliance upon the lease document to be unconvincing.

1 the fair market value of the Baja property to be \$90,000 and
2 indicated there were no mortgages against the home or tax
3 liabilities.

4 The leasehold interest had originally been acquired from
5 Mrs. Mellon. At trial, the debtor testified that his loan
6 application was accurate because "Mrs. Mellon's loan was not
7 secured by anything." However, in contrast to debtor's loan
8 application, debtor later reported, in his bankruptcy schedules,
9 that \$3,000 was owed on the lease to Mrs. Mellon. Debtor also
10 reported \$5,000 in back taxes, etc. Yet, these alleged
11 creditors were not included in his bankruptcy schedules or
12 subsequent amendments. Mrs. Mellon's relationship with the
13 property changes according to the debtor's needs.

14 Unlike the debtor in Kramer v. Poland (In re Poland), 222
15 B.R. 374, 380 (Bankr. M.D. Fla. 1998), who merely miscalculated
16 his ownership interest by 4%, debtor's valuation of the Baja
17 property was not a reasonable error given the fact that he had
18 valued the property at three times the amount only four years
19 before he filed for bankruptcy.

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21 **D. The Watsonville Properties.**

22 On November 8, 1991, the real property at 162 Elm Street,
23 Watsonville, California, ("the 162 Elm Street property") was
24 granted by quitclaim deed to Daniel R. Arruiza, Juanita V. Ryan,
25 Josefa V. Arruiza, Alfonso E. Arruiza and Carlos M. Pailma, as
26 joint tenants. Debtor's mother resides at 162 Elm Street,
27 Watsonville, California. Approximately two years later, on
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1 December 30, 1993, a second property on Elm Street,
2 Watsonville, California ("the 158 Elm Street property") was
3 transferred by grant deed to Daniel R. Arruiza, Juanita V. Ryan,
4 Josefa V. Arruiza, Alfonso E. Arruiza and Carlos M. Pailma, as
5 joint tenants. The 158 Elm property was a rental property at
6 the time of debtor's bankruptcy filing. As of the bankruptcy
7 filing date, there were no encumbrances listed against either of
8 the properties.

9 Despite debtor's assertions that the Watsonville properties
10 are a "title nightmare," debtor's name was listed on the title
11 as a joint tenant for both properties as of the date of his
12 bankruptcy. Yet, debtor failed to report his ownership interest
13 on Schedule "B." Debtor later reported his interest in the 162
14 Elm Street property through the amendment involving SANCON, but
15 he has never formally scheduled or notified the trustee in any
16 way of his interest in the 158 Elm Street property, again
17 misleading the Trustee and any interested creditors.⁴

18 Debtor defends his actions by asserting that his interest
19 in the Watsonville properties was worthless. Debtor testified
20 that his mother loaned him \$35,000 as some form of an
21 advancement against his possible inheritance. Pailma estimated
22 the value of the Watsonville properties at \$150,000. Therefore,
23 he argues that the loans offset his one fifth interest in the
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26 ⁴ Debtor and his siblings listed on the deeds formed the "Joint Tenants General
27 Partnership." Under the partnership agreement, the five children agreed that if a sibling
28 either withdrew, died or desired to sell his interest in SANCON, the Partnership would
obtain all such rights for the sum of \$100.00. The parties filed a fictitious business name
statement and obtained a federal tax payer identification number in 1991. There is no
evidence of the renewal for the partnership's fictitious business name statement.

1 properties and the value is therefore zero.

2 Debtor's argument is unconvincing for several reasons.
3 First, the evidence suggests that Pailma's mother deeded her
4 property to her children in order to collect welfare. Under
5 such circumstances, it is unbelievable that the 82 year old
6 woman could loan her son such a large amount of money. Second,
7 the alleged loans were to be repaid to SANCON, the partnership
8 of the debtor and his siblings, not to his mother. Finally,
9 Pailma's credibility is again called into question when he, as
10 an experience broker, values these properties at \$150,000 at
11 trial, yet valued them at \$200,000 in a 1996 tax return.

12 In addition to the factual discrepancies, the law is clear.
13 The fact that the undisclosed property has no value does not
14 provide a safe harbor for a debtor who engages in a pattern of
15 calculated deception and displays a "cavalier and casual
16 attitude toward the importance of an accurate, complete and
17 honest answer to material disclosures required as to the nature,
18 value, extent and disposal of his assets." In re Haverland, 150
19 B.R. at 772, citing In re Bailey, 53 B.R. 732, 736 (Bankr. W.D.
20 Ky. 1987).

21 In conclusion, the court finds that the debtor failed to
22 disclose his interest in the 158 Elm Street property. Moreover,
23 debtor's representation of his interest in SANCON as zero was
24 inaccurate and debtor intentionally undervalued his interest in
25 order to mislead the trustee.

26
27 **E. Las Palomas.**
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1 Since the early 1980's, debtor was involved in several real
2 estate investment partnerships. During plaintiff and debtor's
3 marriage, the couple loaned monies to these partnerships at
4 various times. The loans were typically secured by a deed of
5 trust recorded against the partnership's property.

6 Just one year and two months before the debtor filed for
7 bankruptcy, on June 6, 1995, debtor's real estate company,
8 Pailma Realty⁵, requested the recording of a deed of trust. The
9 deed of trust granted Pailma Realty a 6.78% interest in a note
10 secured by the property of Las Palomas, one of the debtor's
11 partnerships. The value of debtor's deed of trust was
12 approximately \$8,700, or 6.78% of \$129,441.20. The deed of
13 trust was not scheduled in debtor's Schedules.

14 Finally, over a year after debtor's bankruptcy filing and
15 the closing of the case by the Trustee, on October 21, 1997,
16 Pailma amended his Schedules to report his earnings of \$1,695,
17 or "6.78% interest in Las Palomas note."⁶ However, the debtor
18 did not report that a deed of trust had been recorded against
19 real property.

20
21 **IV. CONCLUSION**

22 In conclusion, the court finds that while no individual
23 piece of evidence alone constitutes the basis for a finding that
24 debtor has been dishonest, the entire record is more than
25 sufficient to support the determination that debtor has made a

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27 ⁵ Debtor owns 100% interest in Pailma Realty.

28 ⁶ The court cannot make sense of the debtor's numbers.

1 false oath. See Burrell v. Sears (In re Sears), 225 B.R. 270,
2 275 (Bankr. R.I. 1998); In re Coombs, 193 B.R. 557 (S.D. Cal.
3 1996).

4 For all the foregoing reasons, the court finds that
5 debtor's undervaluation and omission of certain personal
6 property and real property were knowingly and fraudulently
7 calculated to discourage the investigation of the trustee and
8 his creditors and the facts are sufficient to support a valid
9 claim under 11 U.S.C. § 727(a)(4)(A). Accordingly, the debtor's
10 discharge is denied.⁷

11 The foregoing shall constitute the court's findings of fact
12 and conclusions of law pursuant to Rule 7052 of the Rules of
13 Bankruptcy Procedure. Counsel for plaintiff shall lodge a
14 proposed form of judgment with the court within 20 days. It
15 need not contain the findings of fact and conclusions of law set
16 forth in this memorandum.

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27 ⁷ The court will not discuss the validity of plaintiff's nondischargeability
28 claims, under 11 U.S.C. §§ 523(a)(2)(A) and (a)(5), as her claims are moot given the
court's determination to deny the debtor's discharge.